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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,184	08/20/2003	Donald Charles Soltis JR.	10991204-2	5695

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EXAMINER	
BUTLER, DENNIS	

ART UNIT	PAPER NUMBER
2115	

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/644,184	SOLTIS ET AL.	
	Examiner	Art Unit	
	Dennis M. Butler	2115	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-4* is/are allowed.

6)☒ Claim(s) *5-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/20/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. This action is in response to the application filed on August 20, 2003. Claims 1-11 are pending. This application is a divisional of application 09/457,169, now U.S. Patent 6,651,176. Claims 1-4 correspond to non-elected claims 20-23 in the restriction of the parent application. Claims 5-11 of the present application were not present in the parent application and were not involved in the restriction of the claims of the parent application.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438; 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 5-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10, 13-14, 16 and 17 of U.S. Patent No. 6,651,176. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention. Claim 5 of the application corresponds to claim 10 of the patent. Claim 5 does not recite

controlling maximum average power dissipation in a time frame that is greater than pipeline length. However, the time frame of the pipeline length is very short compared to the rate of change in the temperature of the processor and it would have been obvious to control the maximum average power dissipation in a time frame greater than this very short time in order to avoid unnecessary temperature control procedures. Claim 6 corresponds to claim 13 of the patent. Claim 7 corresponds to claim 16 of the patent. Claims 8 and 9 correspond to claim 17 of the patent. Claim 10 corresponds to claim 14 of the patent. Claim 11 recites an apparatus corresponding to the method recited in claim 1 of the patent. The apparatus of claim 1 would have been obvious in view of the method steps recited in claim 1 of the patent.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 5 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Kling et al., U. S. Patent 6,367,023.

Per claim 5:

A) Kling et al teach the following claimed items:

1. a power dissipation controller (power controller 150) for stalling instructions to control average power dissipation of the pipelined processor

(figure 3) with figures 1, 3 and 6, at column 3, lines 20-28 and 50-59, at column 6, lines 10-20 and at column 8, lines 25-49;

2. logic for comparing a threshold to current capacity of the processor and implementing a low power state within the register pipeline of the processor when capacity exceeds the threshold with figure 6 and at column 8, lines 25-49.

Per claim 10:

Kling teaches the power controller inserting a low power operation (no-ops) to the register pipeline to stall the instructions with figure 7 and at column 8, line 50 – column 9, line 7.

6. Claims 1-4 are allowable over the art of record because the art of record does not teach or suggest the recited computing system comprising a plurality of pipelined processors each having a power dissipation controller that controls internally generated power dissipation to a capacitive model, the controlling achieving substantially maximum average power output dissipation relative to throttled instruction input rate.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis M. Butler whose telephone number is 571-272-3663. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dennis M. Butler

Dennis M. Butler
Primary Examiner
Art Unit 2115